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# Downers Grove Sanitary District

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*Providing a Better Environment for South Central DuPage County*

**Via First Class Mail, Courtesy Copy by Facsimile**

June 14, 2005

Mr. Thomas J. Krueger  
Associate Regional Counsel  
U.S. EPA Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604-3590

EPA Region 5 Records Ctr.



**RE: Ellsworth Industrial Park**

Dear Mr. Krueger:

The purpose of this letter is to follow up on your telephone conference with Mark Latham, Sheila Deely and Frank Lyons of Gardner Carton & Douglas on May 12, 2005, in which you discussed the sampling that the United States Environmental Protection Agency, Region 5 (EPA) is currently coordinating at the Ellsworth Industrial Park as well as the timing of EPA's assistance to allow the Downers Grove Sanitary District to resolve the litigation associated with this matter. We request that EPA revisit its decision to wait until it completes the planned large scale sampling at the Ellsworth Industrial Park before assisting the District with resolution of EPA's initially naming the District as a PRP in the General Notice letter issued in 2002.

As you know, the District has been named in several lawsuits as a direct result of EPA's naming the District in the General Notice letter. These lawsuits include several personal injury complaints by residents in the area of the Ellsworth Industrial Park as well as litigation associated with the Lockformer contamination in Lisle. The District is named in these lawsuits not by the residents or by Lockformer, but by other Ellsworth PRPs, and the pleadings in each case explicitly reference EPA's naming the District as a PRP as the basis for those complaints.

We are asking EPA to revisit its decision to assist the District in resolving this matter based in part on recent developments in certain of the lawsuits pending against the District. The Lockformer litigation has been dismissed with prejudice. The case against the Ellsworth PRPs in that litigation was based in part on a "sewer line" theory, by which Mestek, the parent company of the former Lockformer, claimed that contamination from the Ellsworth Industrial Park migrated to the Lockformer class area from a leaking effluent line owned by the District. Judge Leinenweber recently excluded Lockformer's primary expert in support of this theory, and

based on the Judge's order, Mestek has dismissed its claims against the Ellsworth PRPs with prejudice. Now that those cases are resolved, the only purported basis for the Ellsworth PRPs continuing to keep the District in the other private party cases is EPA's initially naming the District as a PRP based on concern with the sludge lagoons. We believe EPA no longer considers this to be the case based on complying with EPA's requirements for several rounds of sampling performed by Huff & Huff on behalf of the District.

While we understand EPA's need to evaluate the site on a large-scale level, it is the District's view that the intent to wait for the results of this sampling prior to assisting the District in resolving the effects of the prior General Notice letter works a substantial injustice to the District. As you can appreciate, participation in the ongoing litigation requires a significant expenditure of time and money. Through April 30 of this year, the District's total out-of-pocket costs to defend against these actions exceed \$411,000. More importantly, these costs continue at a rate of nearly \$10,000 per month. As a public agency, like EPA, the money the District spends on these cases comes from the public in our service area. It has been almost three years since the District was incorrectly designated as a PRP in this matter. We believe substantial information exists to remove the District as a PRP and we request that this release occur as soon as possible.

We look forward to the EPA's resolving its initial designation of the District as a PRP in this matter, and would be happy to meet with you to discuss any procedural matters.

Very truly yours,

DOWNERS GROVE SANITARY DISTRICT



Donald E. Eckmann  
President



Lawrence C. Cox  
General Manager

cc: Frank Lyons  
Sheila Deely